A.F.R.

469

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

Writ Petition No.2372 of 2006

Writ Petition No.323 of 2006

Writ Petition No.4395 of 2006

ORDER FOR CONSIDERATION

Sd/-
CHIEF JUSTICE
04/09/2006

HON'BLE SHRI D.R. DESHMUKH, J.

Sd/-
Dilip Raosaheb Deshmukh
Judge

06/09/2006

POST IT FOR PRONOUNCEMENT
OF ORDER ON: 07/09/2006

Sd/-

CHIEF JUSTICE
06/09/2006

(465)

A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

Writ Petition No.2372 of 2006

PETITIONERS

1. Shankar Mendhey S/o Narayan Rao Mendhey, R/o Station Road, Kelkar Para, Raipur, District Raipur (C.G.)

2. Sudha Bharadwaj, aged about 44 years, Profession-Advocate, W/o Anoop Singh, R/o Labour Camp, Jamul, District Durg (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh Through the Secretary, Department of Commerce and Industries, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)

2. The State of Chhattisgarh Through the Secretary Department of Mines & Mineral Resources, D.K.S. Bhawan, Mantralaya Raipur (C.G.)

3. Rajya Nivesh Protsahan Board, Near Mantralaya (Renuka Dwar) Shastri Chowk, Raipur (C.G.)

4. Chief Secretary State of Chhattisgarh D.K.S. Bhawan, Mantralaya Raipur (C.G.)

5. Shivraj Singh, Additional Chief Secretary, State of Chhattisgarh, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)

6. Chhattisgarh State Industrial Development Corporation, Through its CEO/MD, Raipur (Chhattisgarh)

7. Union of India, Through the Secretary Department of Mines & Minerals. Shastri Bhawan, New Delhi

8. Secretary, Ministry of Environment and Forests, Govt. of India, Paryavaran Bhawan, Lodhi Road, New Delhi

9. Secretary, Ministry of Steel & Mines, Government of India, Udyog Bhavan, New Delhi

10. National Mineral Development Corporation, Hyderabad (A.P.)

11. Tata Iron and Steel Co. Ltd., Registered Office – Bombay House 24, Homi Mody Street, Mumbai – 400001 Mumbai (M.S.)

12. The Essar Steel Chhattisgarh Limited, having its registered Office at Post Hazira, Pin 394270, District Surat (Gujarat)

**Writ Petition No.323 of 2006**

PETITIONER

1. Dr. Pratap Agrawal s/o Freedom fighter Late BN Agrawal, aged 60, Advocate, Jagdalpur 494001.

**VERSUS**

RESPONDENTS

1. Government of Chhattisgarh, Chief Secretary / Principal Secretary Industries, Mantralaya, Raipur 492001

2. Collector Central Bastar, Jagdalpur: 494001

**Writ Petition No.4395 of 2006**

PETITIONER

Sudiep Shrivastava, S/o Shri V.P. Shrivastava, aged About 37 years, R/o Mungeli Naka, Bilaspur, Tahsil & District Bilaspur (Chhattisgarh)

**VERSUS**

RESPONDENTS

1. Union of India through the Secretary, Ministry of Environment & Forest, Paryavaran Bhawan, CGO Complex, New Delhi

2. Union of India through the Secretary, Ministry of Coal & Mines, Shastri Bhawan, New Delhi (India)

3. State of Chhattisgarh Thru' Principal Secretary, Department of Mines, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

4. State of Chhattisgarh Thru' Principal Secretary, Department of Industries, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

5. Central Pollution Control Board, Government of India Parivesh Bhawan, East Arjun Nagar, New Delhi 110 032 through Its Chairman, New Delhi.

6. Central Water Commission Sewa Bhawan, R.K. Puram New Delhi 110 066 through Its Chairman, New Delhi.

7. Chhattisgarh Environment Conservation Board, thru' Its Secretary, Nanak Niwas, Civil Lines, Raipur (Chhattisgarh)

8. Collector, Bastar at Jagdalpur (Chhattisgarh)

9. Collector, South Bastar at Dantewara (Chhattisgarh)

10. Tata Iron & Steel Co. Ltd. Bombay House, 24, Homi Mody Street, Mumbai 400 001 (M.S.)

11. Essar Steel Chhattisgarh Limited, (a wholly owned Subsidiary of Essar Steel Ltd.), Registered Office at PO Hazira, District Surat (Gujarat) 394270

Present :-

Shri Prateek Sharma, learned counsel for petitioner No.1 & Ms. Sudha Bhardwaj, petitioner No.2 in person in W.P.No.2372/2006.

Dr. Pratap Agrawal, petitioner in person in W.P.No.323/2006.

Shri Manindra Shrivastava, learned Senior Advocate with Shri Amrito Das, learned counsel for the petitioner in W.P.No.4395/2006.

Shri Prashant Mishra, learned Addl. Advocate General with Shri Utkarsh Verma, learned Dy. Govt. Advocate for the State of Chhattisgarh alongwith Shri Shivraj Singh, Addl. Chief Secretary, State of Chhattisgarh.

Shri S.K. Beriwal, learned standing counsel for the Union of India.

Shri S. Pal, learned Senior Advocate with Shri S. Mitra & Shri Sanjay K. Agrawal, learned counsel for respondent/Tata Iron & Steel Company Ltd. alongwith Mrs. Meena Lal, Head-Legal (Corporate Matters), TISCO.

Shri Vivek Tankha, learned Senior Advocate with Shri Sachin Singh Rajput, learned counsel for respondent/Essar Steel Chhattisgarh Ltd.

Shri P.S. Koshy, learned counsel for respondent/ National Mineral Development Corporation.

# ORDER

**(Passed on 7th September, 2006)**

The following order of the Court was passed by **S.R. NAYAK, CJ,** :

The Indian Parliament by enacting Madhya Pradesh Reorganization Act, 2000 (Act 28 of 2000), formed the new State of Chhattisgarh by dividing the erstwhile State of Madhya Pradesh with effect from 01-11-2000. As per the Statement of Objects and Reasons of the said Act, the new State of Chhattisgarh was formed *inter alia* to meet the democratic aspirations of the people of Chhattisgarh State.

(2) The new State of Chhattisgarh framed the Industrial Policy in the year 2004 for a period of five years. The relevant objectives of the Industrial Policy ***inter alia*** include the following :

> "(i) to create additional employment opportunities by accelerating the process of industrialization in the state;
> (ii) to create enabling environment for ensuring maximum value addition to the abundant, locally available mineral and forest based resources;
> (iii) to ensure balanced regional development by attracting industries in the economically backward areas of the state;
> (iv) to promote private sector participation for creation of industrial infrastructure in the state and
> (v) to create a conducive environment for increasing industrial production, productivity and quality up gradation to face the challenge of competition emerging from economic liberalization".

It is stated that the said Industrial Policy has been formulated with the object of rapid economic growth and development with regional balance to take the Chhattisgarh State to the level of developed States in the country

and to bring about prosperity in the State so as to improve the standard of life of the people. The Industrial Policy promises several incentives, concessions and benefits to prospective investors who desire to set up industrial units in the State of Chhattisgarh. Such incentives *inter alia* include subsidies of various nature and exemption and/or deferred payment of taxes.

(3) Tata Iron & Steel Company Limited (for short 'TISCO') and Essar Steel Chhattisgarh Limited (for short 'ESSAR'), respondents No.11 & 12 and respondents No.10 & 11, respectively, in W.P.Nos. 2372/2006 & 4395/2006, it is stated, held several meetings with the topmost & responsible officers and authorities of the State Government in the year 2005 having regard to the objectives of the State Government to promote industrialization and upgrade the life of the citizens of the State of Chhattisgarh and came forward to set up integrated steel plants. Those negotiations and discussions led to the signing of Memorandum of Understandings (for short 'MOUs'). The MOU with TISCO was signed on 04-06-2005 containing, *inter alia*, the road-map for setting up the integrated steel plant in Bastar region with a capacity of 5 million tonnes per annum as also the benefits, incentives and concessions which are to be granted by the State of Chhattisgarh. Similar MOU with ESSAR was signed on 05-07-2005 to set up a Steel Plant in Bastar region with a production capacity of 3.2 million tones per annum in phases at an approximate investment of Rs.6,000 crores.

(4) In pursuance of the MOU, in the return filed by TISCO, it is stated that the following steps have been taken :

"20.1 That, in accordance with Rule 4(2) of the Chhattisgarh Audhyogik Nivesh Protsahan Niaym. 2004, framed under the Chhattisgarh Audhyogik Nivesh Protsahan Niaym. 2002, the State Government provided the several formats collectively called as 'Common Application Form' to the answering Respondent for necessary provisions such as land, water, etc. as are required for an industrial project, such forms inter-alia including :

i. Application for use of forest land for non-forest purposes;
ii. Application for allotment of Government land;
iii. Application for acquisition of private land.

20.2 That after working out the necessary details jointly with the officials of the State Government, the answering Respondent, submitted the Common Application Form to the Nodal Officer in the manner prescribed by the State Government.

20.3 That in the Industrial Policy 2004-2009, the District of Bastar has been defined as the 'Most Backward Scheduled Tribe Dominant Area' and for bringing the said area to the level of other parts of the State, private sector participation is being envisaged by the State Government. Therefore, it was jointly decided by the officials of the State Government and the answering Respondent that the industrial unit would be set up in the Salepal and Barupata villages of District Bastar,

20.4 That under the provisions of Mines and Minerals (Development and Regulation) Act, 1957, the petitioner has submitted requisite applications for allocation of iron ore mines, which is one of most important raw materials for steel making;

20.5 That similarly, for supply of water and electricity, the answering Respondent has submitted requisite applications under the relevant Central/ State laws;

20.6 That while the applications of this Respondent were being scrutinized the Government of Chhattisgarh, it came to light that the land identified in the villages Salepal and Barupata contains a mineral resource called 'Kimberlite', which is a diamond bearing mineral;

20.7 That under such circumstances, the answering Respondent had no option, but to change the site of location of the industry to the Lohandiguda Block in Bastar District;

20.8 That the acquisition of land under the provisions of Land Acquisition Act 1894 and allocation thereof to this Respondent is subject to the Rehabilitation Plan to be submitted by an investor, which is prepared under the State Model Rehabilitation Policy, 2005 and in consultation with the authorities of State Government."

(5) When the matter stood thus, it seems that in the month of January, 2006, Dr. Pratap Agrawal, S/o Late B.N. Agrawal, Advocate, sent an unsigned petition, styled as a writ petition to the High Court. It is unfortunate, though the above petition was not signed by Dr. Pratap Agrawal, since that fact was not brought to the notice of the concerned, erroneously, the same was directed to be treated as a Public Interest Litigation. In that petition (W.P. No. 323 of 206) the following reliefs are sought :

"i) an interim stay against land acquisition process.

ii) No Agricultural land, abadi sites, grave yards, temples, ponds, school buildings, panchayat buildings, roads, stone quarry, should be acquired for any industry.

iii) The village panchayat should not be intimidated to pass resolution in favour of industry. Every individual cultivator, house hold should be given free chance either to consent/dissent and their land should not be acquired unless they give free consent.

iv) Process of allotment of land or land acquisition should not start without impact assessment study and a public hearing on this. The denial of cultivators to part with their land, should be protected.

v) villages should not be put in under land acquisition for an industry alternatively, if land is acquired and industry established employment guarantee to every member of family should be given from the date of acquisition, there should be profit sharing, unofficial local director, project director should be local should be ordered from the date of acquisition process starts.

vi) relief as pleaded and prayed in aforesaid paras 3 be granted in the discretion of this Hon'ble Court.

vii) The process of establishment of Tata Steel or any other project should succeed after study and clearance on the points of agriculture, flora, fauna, bio diversity, ecology, environment, water-stream, wild animal, pollution control etc.

viii) This is a kimberlitic zone and thus no land should be allotted to the industry for a steel plant. The applied land is a part of kimberlitic zone.

ix) Unless transparently every material is put before the public, no action for land acquisition

should start. Those who do not want to part with their land, their land should not be acquired.

x) If the industry is imposed, than In the board of directors of the company, an independent director from the locality should be appointed and also the project director should be a local engineer. This is necessary to safeguard the interest of local in the matter of employment and to curb the evil of the East India Co. attitude.

xi) No land or abadi can be evacuated for being allotted to any industry which is in breach of law enumerated in above para 6. An appropriate writ be issued by this Honourable Court to declare such action illegal, null and void and an interim order prohibiting the respondents to proceed with evacuation and land acquisition and allotment of land to any industry be granted.

xii) if the Court deems necessity of the industry, the steel industry does not need more than 1000 acres of land and the land applied in excess be rejected, and only vacant government land may be allotted.

xiii) Rehabilitation package for new-Raipur and that for Tata-Steel acquisition is different. Two different formula can't be formulated and it be declared illegal, null and void.

xiv) Any other relief the Court deems fit be granted".

Subsequently, Shri V.C. Ottalwar, Shri R.D. Rai and Shri O.P. Agrawal, Advocates filed Vakalatnama on behalf of the petitioner. The Court having entertained the writ petition as Public Interest Litigation, directed notice re-rule *nisi* on 23-01-2006. The Government of Chhattisgarh represented by the Chief Secretary / Principal Secretary Industries and the Collector, Central Bastar, Jagdalpur are arrayed as respondents to the said writ

petition. On service of notice, on behalf of the respondents a return was filed.

(6) In the month of April,2006, Shri Shankar Mendhey and Ms. Sudha Bharadwaj jointly filed W.P. No.2372 of 2006 as a Public Interest Litigation claiming to be *pro bono* public characters, questioning the legality of the MOUs signed by the Government of Chhattisgarh with TISCO and ESSAR. In the writ petition, they have prayed for the following reliefs :

> "i. To kindly call for the records of the case from the respondents.
>
> ii. To kindly issue a writ of certiorari by quashing the impugned MOUs executed between the respondent State and the respondents 11 and 12.
>
> iii. To kindly issue a writ of mandamus to the respondents to keep the iron ore blocks reserve in due and adequate measure in favour of the SAIL, B.S.P.
>
> iv. To kindly issue a writ of mandamus to the respondent State to first make a detailed study by the team of experts including the chosen representatives of the people to evaluate the pros and cons of the proposal of the establishment of the aforesaid steel plants.
>
> v. To kindly make any other order that may be deemed fit and just in the facts and circumstances of the case including awarding of the costs to the petitioners. "

This Court having entertained the said writ petition on 21-06-2006 directed notice to the respondents TISCO & ESSAR. On behalf of the other respondents, learned Additional Advocate General and other standing

counsel took notice. On service of notice, return was filed on behalf of respondents 1 to 5 and also on behalf of TISCO and ESSAR with certain documents in support of their contentions. TISCO also filed an application, I.A. No.6330 of 2006 for dismissal of the writ petition as not maintainable.

(7) In view of the contentions raised by respondents 1 to 5 that the MOUs produced by the petitioners are not the correct versions of the MOUs signed with the TISCO and ESSAR and since the correct versions of the MOUs are produced with the return of respondents 1 to 5 and other respondents, the petitioners filed I.A. No.7989 of 2006 for amendment of the writ petition so as to challenge the correct MOUs. That application was allowed by the Court vide its order dated 22-08-2006.

(8) In the meanwhile, another writ petition, being W.P. No.4395 of 2006 was filed by one Sudiep Shrivastava, S/o Shri V.P. Shrivastava, R/o Mungeli Naka, Bilaspur as a Public Interest Litigation, claiming to be a *pro bono* public character, questioning the legality of the same MOUs. In W.P. No.4395 of 2006 the following reliefs are sought :

> "i. It is prayed that this Hon'ble Court may kindly be pleased to call for the entire records leading to execution of MOU from the possession of the respondents for its kind perusal.
>
> ii. This Hon'ble Court may kindly be pleased to issue appropriate order / direction restraining the respondent State from giving effect to or acting upon uncalled for undertakings, assurances, and commitments to the respondents Tata Steel and Essar so as to bind it in breach of Central & State Laws, public policy and public interest referred in the petition.

iii. This Hon'ble Court may kindly be pleased to issue appropriate order / directions to respondents Tata Steel and Essar restraining them from undertaking the projects for establishment of integrated Steel Plants without clearance from Ministry of Environment & Forest, Government of India, as required under Environment (Protection) Act as also Forest Conservation Act.

iv. Appropriate order / directions may also kindly be issued by this Hon'ble restraining respondent State from acquiring land for the purposes of project for establishment of integrated steel plant and/or acquisition of land for the purposes of declaring Special Industrial Area without obtaining required clearance under the provisions of EPA and FCA.

v. This Hon'ble Court may further be pleased to issue appropriate directions / orders to the State Government to restrain it from granting tax concessions as referred to in the petition in favour of the respondents Tata Steel and Essar.

vi. This Hon'ble Court may also kindly be pleased to issue appropriate directions / orders commanding the State enforce rehabilitation policy as promulgated by the Government of India by imposing appropriate terms and conditions regarding identification of project affected persons and families as also special provisions for Scheduled Caste and Scheduled Tribes.

vii. This Hon'ble Court may also kindly be pleased to issue appropriate directions / orders to the State to formulate new rate of compensation as also the other facilities as per the demand charter of the directly affected population.

viii. Any other relief / reliefs, which this Hon'ble Court may think fit and proper in the facts and

circumstances of the case, with cost of the petition, may also please be granted to the petitioner".

The said writ petition was admitted on 22-08-2006. Since the other two writ petitions were listed for final hearing and disposal on 22-08-2006, with the consent of Shri Manindra Shrivastava, learned Sr. Counsel who appeared for the petitioner in W.P. No.4395 of 2006, that writ petition was clubbed with the other two writ petitions and all the writ petitions were heard on 22-08-2006 and 23-08-2006 for final disposal. Shri Prashant Mishra, learned Additional Advocate General appearing for State and its Authorities, Shri S.Pal, learned Sr. Advocate appearing for TISCO and Shri Vivek Tankha, learned Sr. Advocate appearing for ESSAR submitted that they would adopt the returns filed by their clients in W.P. No.2372 of 2006 as their return in W.P. No.4395 of 2006 also.

(9) We heard learned counsel for the parties.

(10) Ms. Sudha Bhardwaj who is the petitioner No.2 in W.P. No.2372 of 2006 appeared in person and argued on behalf of the petitioners in the said writ petition. She contended that the Government of Chhattisgarh by signing the impugned MOUs with the TISCO and ESSAR has sacrificed the interest of the most down-trodden, poverty-stricken people of Bastar region. She would contend that under the MOUs the Government has agreed to consider for giving relaxation to TISCO and ESSAR from the employment conditions of the Industrial Policy. She would contend that the acquisition of private lands for the proposed projects of TISCO and ESSAR would deprive the owners of the private lands of agriculture and livelihood. She would contend that in signing the MOUs with TISCO and

ESSAR, the State Government has violated its own model rehabilitation policy. She would contend that the State Government in agreeing to make constant supply of electricity and water has sacrificed the interest of the agriculturists and violated the provisions of the Irrigation Act, 1931. She would submit that by proposing to give a free hand to TISCO and ESSAR for selection of sites / lands including private lands even belonging to tribal people and other backward classes and also forest lands, the Government has violated all applicable laws. She would contend that if the projects envisaged under the impugned MOUs are executed, it would cause irreparable damage to the environment and forests of Bastar. She would contend that the MOUs were signed with TISCO and ESSAR in violation of the provisions of Environment (Protection) Act,1986; Water (Prevention and Control of Pollution) Act,1974; Forest Conservation Act and C.G. Irrigation Act, 1931. She concluded by contending that if the proposed projects envisaged under the impugned MOUs are ultimately executed, they would be totally against the people's interest; they would destroy the environment and ecology and that there was absolutely no need for the State Government to go for these projects and they are not in the interest of public at large nor in the interest of the State.

(11) Dr.Pratap Agrawal, who is the petitioner in W.P. No.323 of 2006 appeared in person and made his submissions. Dr. Pratap Agrawal while adopting the submissions of Ms.Sudha Bhardwaj would supplement by contending that the lands required by TISCO and ESSAR for establishing their plants fall within the Scheduled Areas and therefore, the State Government before signing the impugned MOUs with TISCO and ESSAR ought to have taken consent of the concerned Gram Sabhas or the Panchayats in terms of the mandatory provisions of Clause (i) of Section 4

of the Provisions of the Panchayats (Extensions to the Scheduled Areas) Act, 1996, because, without consent of the concerned Gram Sabhas or the Panchayats, no land in the Scheduled Areas could be acquired for any development projects.

(12) Shri Manindra Shrivastava, learned Sr. counsel appearing for the petitioner in W.P. No.4395 of 2006, would contend that the undertakings, assurances and commitments held out by the State Government in favour of the TISCO and ESSAR as contained in their respective MOUs are in breach of the Forest Conservation Act, Environment (Protection) Act, 1986; MMRD Act, 1957; Air (Prevention and Control of Pollution) Act, 1981; The Water (Prevention and Control of Pollution) Act, 1974, as also against various National and State Rehabilitation Policies. He would contend that the State Government in breach of doctrine of public trust has given such undertakings, assurances and commitments. He would contend that the State Government ought not to have committed itself to allot required land to TISCO and ESSAR within a stipulated time without reciprocal undertaking of clearance under the Environment (Protection) Act, 1986 and Forest Conservation Act as a condition precedent and that tantamounts to gross abuse and misuse of public authority and also against the precautionary principle of sustainable development. He would contend that the terms and conditions of the MOUs with regard to grant of mining lease irrespective of preferential entitlement under the statutory provisions of MMRD Act and Mineral Concession Rules, is in violation of law. He would submit that the action of the State Government to proceed to acquire the land / declare any parcel of land as industrial area without seeking clearance from Ministry of Environment & Forest as required under E.I.A. notification is illegal and excess of authority. He would submit

that the undertaking of the State Government to make available water without recommendation from the appropriate authority mainly the Central Water Commission is also in excess of authority. Similarly, he would submit that the commitments of the State Government to make available huge power requirement without any reference to resources is completely arbitrary and irrational. Shri Manindra Shrivastava would conclude his submission by contending that the terms and conditions incorporated in the impugned MOUs are totally against public interest in general and in the interest of tribal people of Bastar District in particular.

(13) *Per contra*, Shri Prashant Mishra, learned Additional Advocate General appearing for the State Government and its authorities, would submit that the Government of Chhattisgarh, since its inception, has been taking policy initiatives for acceleration of the development process in various sectors of the State's economy so as to generate new economic activities leading to avenues for employment and for raising the standard of life of its people in general, and the people in the Scheduled Areas mainly inhabited by the tribals in particular and towards that end the State Government has formulated State's new Industrial Policy for a period of five years i.e. 2004-2009, with effect from 1st November, 2004. In the new Industrial Policy incentives and concessions have been provided to attract investments in the State. Accordingly, the State Government received proposals from TISCO and ESSAR for putting up Steel Plants in the economically backward Bastar region where deposits of iron ore, the basic raw material for steel making are located. He would submit that the TISCO as well as ESSAR are well known in the field of steel manufacturing and they have already established such plants at Jamshedpur and Hazira, respectively. Accordingly, MOUs were signed

with them keeping in mind the best interest of the State in general and the best interest of the people in Bastar region in particular. He would submit that all the allegations, apprehensions, suspicions expressed by the petitioners in these writ petitions are baseless, motivated and without any accountability. He would strongly refute the allegation that if the Steel Plants are established in Bastar region that would be detrimental to the tribals, environment, flora and fauna and on the other hand, he would submit, it will boost the growth and development of the region in every conceivable way. He would submit that the MOUs signed with TISCO and ESSAR in no way infringes or violates any provisions of the Constitution, any Statute, Rules & Regulations which govern the field, such as Land Acquisition Act, Environment (Protection) Act, Forest Conservation Act, Irrigation Act, 1931 and Mines and Minerals (Development and Regulations) Act. He would highlight that large parts of Bastar region are inflicted with Naxalites' increased menace and atrocities primarily because of lack of development and gainful employment. He would submit that the National and State Policies to control / check naxalism / militancy / extremism is to generate economic activities in the affected areas for providing gainful employment to the people in such areas. He would submit that it is for that reason the State Government, as a part of National strategy to combat, has decided to promote and support industrial projects proposed by the TISCO and ESSAR. He would conclude that the petitioners though claimed to be *pro bono* public characters and have filed these writ petitions in the public interest, actually they have filed these writ petitions at the behest of certain groups and people who have vested interests in that region to stall / delay the execution of the projects, and in view of the pendency of these writ petitions, further steps to be taken in

pursuance of the MOUs are not progressed in the way the State Government and TISCO & ESSAR had expected.

(14) Shri S. Pal, learned Sr. counsel appearing for TISCO, at the outset would submit that the writ petitions are totally misconceived. He would submit that though claimed to be PILs, they are actually intended to disserve the public interest. He would submit that any delay would hamper the industrial and economical growth and development of the most backward Bastar region of the State of Chhattisgarh. He would submit that none of the petitioners are *pro bono* public characters and they have filed these writ petitions lending their names at the behest of certain vested interest in the region and for oblique and extraneous considerations. He would submit that none of the petitioners have stature of social workers. He would submit that the reliefs sought are untenable; the information given is incorrect and as vague as it could be. The petitioners before filing the writ petitions have not taken care to verify the correct facts and they have made reckless and baseless allegations against the officers and authorities of the State Government as well as against the TISCO and ESSAR. Shri S. Pal would submit that, as on today, there is nothing to review on merit because the proposal submitted by TISCO is in the pipeline and the State Government has to consider the same and only after negotiations and consultations it might or might not come forward to enter into an agreement, and therefore, all the apprehensions and suspicions with regard to the State Government and TISCO & ESSAR not conforming to the public law obligations, various statutes is nothing but the outcome of fertile imagination of the petitioners. He would submit that the petitioners as doubting monsters have doubted the integrity of the Government and its authorities and the managements

of TISCO and ESSAR that they would establish the proposed plants in breach of each and every law. Shri Pal would submit that the allegations made in that regard are totally irresponsible and vexatious. He would submit that the TISCO has a track record in steel-making and in adhering to all the statutes as are applicable at various stages of steel manufacturing industry starting from procuring raw-materials to sales and marketing, and the *bonafide* of TISCO is time-tested and unimpeachable. He would also point out that with reference to what is stated in para 20 of the return filed by TISCO, steps have already been taken to conform to the public law obligations in pursuance of the impugned MOUs. He would submit that the issue brought before the Court squarely falls within the domain of the industrial and economical policy of the State and the petitioners have utterly failed to make out any ground on the basis of which such policy could be tested or interfered with by this Court under Article 226 of the Constitution of India.

(15) Shri Vivek Tankha, learned Sr. counsel appearing for ESSAR while supplementing the submissions of Shri S.Pal, Sr. Advocate, would submit that none of the public law obligations, State or Central Economic Industrial Rehabilitation Policies nor any public law statute has been violated by signing the MOUs, and all the allegations made by the petitioners are outcome of baseless apprehensions and imaginations. He would submit that in the case of ESSAR, they have not even placed any package of proposals. He would submit that the writ petitions are totally premature; they are not intended to sub-serve the public interest as claimed by the petitioners and they are mischievous and they are intended to stall / delay the establishment of steel plants in Bastar region at the peril

of the people living therein who are mainly tribals. Shri Tankha would submit that the writ petitions are liable to be dismissed in *limine.*

(16) Before we proceed to consider the rival contentions, we think it appropriate to place a fact on record. When the writ petitions were heard finally on 22-08-2006, Shri Prateek Sharma, learned counsel appearing on behalf of petitioner No.1 in W.P. No. 2372 of 2006 submitted that his Senior Counsel, namely, Shri Kanak Tiwari, learned Sr. Advocate would make submission on behalf of the petitioners to supplement the submissions made by Ms. Sudha Bhardwaj- petitioner No.2 and requested the Court to adjourn the case to 23-08-2006. Accordingly, at his specific request, the case was adjourned. On 23-08-2006, when the case was called Shri Prateek Sharma and his senior were absent and no representation was made on behalf of them. Petitioner No.1 was also not present. Therefore, we passed over the case and we heard Dr. Pratap Agrawal, petitioner in person in W.P. No. 323 of 2006 and we also permitted Mrs. Meena Lal, Head-Legal (Corporate Matters) TISCO, on behalf of TISCO to make submissions. After hearing them, we again called out the case second time. At that time also, none appeared nor any representation was made on behalf of petitioner No.1. Since Ms. Sudha Bhardwaj had already made comprehensive and extensive submissions on behalf of the petitioners in W.P. No. 2372 of 2006, we concluded hearing and reserved the judgment. It needs to be noticed that although W.P. No. 2372 of 2006 is filed by two petitioners jointly, their pleadings, grounds urged, documents produced are the same and they are not seeking any separate reliefs, we acceded to the request of Shri Prateek Sharma to adjourn the case to 23-08-2006 in order to facilitate him or his senior to supplement the submissions made by Ms. Sudha Bhardwaj and

they have failed to avail of the opportunity. It is not as if when a common petition is filed by more than one person, may be hundred or thousand persons, each and every such petitioner or counsel of each such petitioner should be heard separately. However, on 24-08-2006 Shri Kanak Tiwari, learned Sr. Advocate requested the Court to permit him to file written arguments and we acceded to that request and permitted not only him but all the learned counsel appearing for the parties to file their written arguments, if they so desire, on or before 28-08-2006. No written arguments are filed on behalf of the petitioners in W.P. No. 2372 of 2006 on or before the cut-off date i.e. 28-08-2006 or till date.

(17) Having heard learned counsel for the parties, we are of the considered opinion that the writ petitions are not only premature, but also based on baseless allegations and speculations. The impugned MOUs are the proposals, road-maps only. For setting up steel plants, the Government of Chhattisgarh have to consider the proposals and the Government of Chhattisgarh have yet to consider the proposals and take a decision in the matter. Only if the Government of Chhattisgarh finally enter into agreements with TISCO and ESSAR, various further steps have to be undertaken for establishing steel plants, and at this stage the question of not conforming with public law obligations arising under various statutes by the Government of C.G., as well as TISCO and ESSAR would not arise. Whereas that is the undeniable position and the proposals are in pipeline, the petitioners seem to think that the agreements are already entered into between the Government of Chhattisgarh and TISCO & ESSAR and they are going to establish the steel plants in Bastar region in violation of the Forest Conservation Act, Environment (Protection) Act, 1986; MMRD Act, 1957; Air (Prevention and

Control of Pollution) Act, 1981; the Water (Prevention and Control of Pollution) Act, 1974 as also against various National and State Rehabilitation Policies etc.

(13) In that view of the matter, the writ petitions are liable to be dismissed in *limine* as premature and being based on baseless allegations and speculations. In the course of hearing, Ms. Sudha Bhardwaj, Dr. Pratap Agrawal and Shri Manindra Shrivastava, learned Sr. Counsel repeatedly submitted that the petitioners are not against the proposed steel plants, but prayed the Court to direct the Government of Chhattisgarh as well as TISCO and ESSAR to abide by the public law obligations arising out of the statutes referred to above before executing the projects. Although, such a direction could not be sought nor the Court could grant solely on the basis of the petitioners' apprehensions and suspicions, we should say, in all fairness, Shri Prashant Mishra, learned Addl. Advocate General, Shri S.Pal, learned Sr. Advocate appearing for TISCO and Shri Vivek Tankha, learned Sr. Advocate appearing for ESSAR referring to the returns filed by them and also the relevant clauses in the impugned MOUs would undertake that the steel plants have to be established only after conforming to and complying with the public law obligations arising out of the relevant applicable laws. In para 26 of the return filed by the State and its authorities, it is stated that the TISCO and ESSAR are *"required to set up the steel plants after seeking statutory permission, sanction, approval, license, etc. within the framework of relevant provisions of law, namely, the Environment (Protection) Act, the AIR Act, the Water Act, the Forest Conservation Act, the C.G. Irrigation Act and all other relevant, applicable and operative laws"*. In addition, in the course of arguments, learned Addl. Advocate General submitted that

all applicable laws and the State Government policies including in particular rehabilitation and employment policies would be complied with by the State Government as well as TISCO and ESSAR for the purpose of execution of the projects concerned. Shri S. Pal and Shri Vivek Tankha, learned Sr. Counsel appearing for TISCO and ESSAR also gave similar undertakings before the Court. Having regard to the relevant clauses in the impugned MOUs, commitments made by the Government of Chhattisgarh on the one hand and TISCO & ESSAR on the other hand in their respective returns to comply with all public law obligations in execution of the projects, the grievances of the writ petitioners, assuming that they could have grievances, in the facts and circumstances of the case, do not and cannot survive for decision-making.

(19) It is not as if the impugned MOUs permit the execution of the projects without complying with the relevant public laws and policies of the State Government. For example, in the impugned MOU signed with TISCO, it is stated that the Government of Chhattisgarh has agreed to meet the requirement of iron ore of TISCO by granting mining lease subject to the statutory provisions *(emphasis supplied)*. The most important and significant clauses in the MOU are clauses (c) and (e). Those clauses in unmistakable terms require the TISCO to obtain all clearances, including environment and forest clearances from the State Pollution Control Board and the Ministry of Environment and Forests, Government of India under the Environmental (Protection) Act, 1986 and under the Forest (Conservation) Act, 1980 for opening up iron ore mines, laying roads, rail and construction of township etc. The MOU further provides to fulfill the requirement of coal for the integrated steel plant project to be established by the TISCO, the Government of Chhattisgarh

has agreed to recommend grant of prospecting license / mining leases for captive use over such areas as may be available in the State of Chhattisgarh for that purpose in line with the applicable law and policy of the Government of India (*emphasis supplied*) for allocation of coal blocks for captive use for the steel sector projects. The MOU also envisages that the TISCO shall provide necessary infrastructures for operation of the steel plant and township only after obtaining the required permission and clearances. It also contains the provisions regarding obtaining of statutory permission regarding generation / distribution of electricity. Similar clauses referred to above in case of TISCO are the clauses in the MOU signed with the ESSAR. Thus, it is quite clear that the allegations made by the petitioners are totally baseless, misreading of the impugned MOUs and unfounded apprehensions that the Government of Chhattisgarh, TISCO & ESSAR would execute the projects in violation of the public law obligations.

(20) Even otherwise, the issue brought before the Court, in the facts and circumstances of the case, is not justiciable. The Government of Chhattisgarh and its authorities in their return have stated that they have signed the impugned MOUs with TISCO and ESSAR in pursuance of the State Industrial Policy for acceleration of the industrial growth and development in the State in order to create better avenues for employment and for raising standard of living of people in general and the tribal people in the Scheduled Areas, in particular. It is stated that the people living in Bastar district, which is primarily inhabited by the tribals, are the poorest lot in comparison to the people living in the districts of Central Chhattisgarh, and the whole of Bastar region is poverty-stricken. They have also enclosed a chart marked as Annexure R-2 showing the district

wise statistics of the people living below the poverty line to highlight the utter poverty in Bastar region. It is also stated that the State Industrial Policy in order to attract required investments in the State provides for incentives and concessions.

(21) Thus, it is quite clear that the MOUs are signed with TISCO and ESSAR by the Government of Chhattisgarh in pursuance of a Fiscal and Industrial Policy. The judicial review of policy decisions of the State is very much circumscribed and limited. The Courts have consistently refrained from interfering with economic and industrial decisions and policies because of the realization of the Courts 'that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional and legal limits on power or so abhorrent to reason, the Courts would decline to interfere. In matter relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are *bona fide* and within limits of authority'.

(22) The Supreme Court in **Premium Granites v. State of T.N.** [1] while considering the Court's powers in interfering with the policy decision, in para 54 observed thus:

> " 54. It is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be".

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1. (1994) 2 SCC-691

(23) The Supreme Court in **M.P. Oil Extraction v. State of M.P** [2] while considering the validity of the industrial policy of the State of Madhya Pradesh relating to the agreements entered into for supply of sal seeds for extracting oil, in para 41 held thus:

> "41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere *ipse dixit* of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere *ipse dixit* of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India.

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2. (1997) 7 SCC 592

> The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields".

(24) Furthermore, the Supreme Court has emphasized on the limited scope of judicial review of the matters of economic policy in **Bhavesh D. Parish v. Union of India** [3] while examining the validity of Section 45-S of the Reserve Bank of India Act, 1934, in para 26 of the judgment thus:

> "26. The services rendered by certain informal sectors of the Indian economy could not be belittled. However, in the path of economic progress, if the informal system was sought to be replaced by a more organized system, capable of better regulation and discipline, then this was an economic philosophy reflected by the legislation in question. Such a philosophy might have its merits and demerits. But these were matters of economic policy. They are best left of the wisdom of the legislature and in policy matters the accepted principle is that the courts should not interfere. Moreover in the context of the

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3. (2000) 5 SCC 471

changed economic scenario the expertise of people dealing with the subject should not be lightly interfered with. The consequences of such interdiction can have large-scale ramifications and can put the clock back for a number of years. The process of rationalization of the infirmities in the economy can be put in serious jeopardy and, therefore, it is necessary that while dealing with economic legislations, this Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation should interfere only in those few cases where the view reflected in legislation is not possible to be taken at all".

(25) The Supreme Court in **BALCO Employees' Union (Regd.) v.** Union of India and **others** [4] in para 46 observed thus:

"46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical".

(26) In the same decision, in para 93, the Supreme Court was pleased to observe thus:

"93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider

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4. (2002) 2 SCC 333

> relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts".

(27) Thus, it is now well settled that the Courts, in exercise of judicial review, will not transgress into the field of policy decision unless in a given case it is shown that the impugned policy decision is *ex facie* arbitrary, unreasonable and violative of Article 14 postulates. It has to be remembered that in a complex arena of economic, industrial and developmental policies of the State in which no perfect alternatives exist, the Court does well not to impose too rigorous standard of judicial scrutiny lest all fiscal, industrial and developmental schemes become subjects of criticism that the Court's intervention and / or decisions stall / delay development activities of the State. On questions of economic, industrial and development matters, the Government which is accountable to the people, should have necessary latitude to take policy decisions, and it is not for the Court to consider the propriety or justness of such policies and the Court can step in under Article 226 of the Constitution of India only when it finds the impugned policy transgresses the constitutional and statutory limitations.

(28) We do not find any merit in the submission of Dr. Pratap Agrawal, petitioner in W.P. No.323 of 2006 that the State Government before signing the MOUs with TISCO and ESSAR ought to have taken consent of the concerned Gram Sabhas or Panchayats in terms of the provisions of clause (i) of Section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996. Section 4 of the said Act deals with exceptions and modifications to Part IX of the Constitution and provides, among other things, that notwithstanding anything contained under Part IX

of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with certain features specified in clause (a) to (o) thereof. Clause (i) provides that the Gram Sabhas or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level. What clause (i) requires is consultation of the concerned Gram Sabha or Panchayat and not obtaining consent of such Gram Sabha or Panchayat for acquisition of land. There is no need for us to dilate on this aspect further, because, only after the Government of Chhattisgarh ultimately enter into agreements with TISCO and ESSAR to establish steel plants in Bastar region, the question of acquisition of lands for the proposed projects would arise.

(29) In the result, we hold that the signing the impugned MOUs with TISCO and ESSAR does not transgress any constitutional limitations or statutory limitations. On the other hand, it is our considered opinion that if the projects envisaged under the impugned MOUs come through and are executed strictly in accordance with law, they would usher in all-round development of the most backward region of the Chhattisgarh State. We, however, hasten to add that Bastar is a land of full of natural bounties. It has a wealth of forest and minerals. It is also inhabited by poor, uneducated tribals. We hope and trust, and express our deep concern that if the projects envisaged under the MOUs for exploiting the mother-earth come through, the State Government, as undertaken by it before us, shall ensure that all the statutory requirements for protecting the flora and

fauna, environment and the beautiful forests of Bastar and the industrial as also the rehabilitation policy for the Tribals of Bastar region shall strictly be adhered to and complied with.

(30) In the result and for the foregoing reasons, we dismiss all the writ petitions, however, with no order as to costs.

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| **Sd/-**<br>**Chief Justice** | **Sd/-**<br>**Dilip Raosaheb Deshmukh**<br>**Judge** |
| 07-09-2006. | 07-09-2006. |

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